

COBRA Subsidies Under the American Rescue Plan Act

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The American Rescue Plan Act (ARPA), signed into law on March 11, 2021, requires employers to provide free COBRA coverage to employees (and family members) who qualify for COBRA due to an involuntary termination of employment or reduction in hours. Employers are required to offer free COBRA coverage between April 1 and September 30, 2021 (the “Subsidy Period”). This Advisory discusses employer obligations related to the subsidy – including new COBRA election periods and new COBRA notices – and how employers will be reimbursed for this 100% subsidized COBRA coverage through a payroll tax credit.

What Types of Health Plans Must Offer Free COBRA Coverage?

The subsidy will cover premiums for all group health plans subject to COBRA continuation coverage requirements (medical, dental, and vision plans). The subsidy will also cover plans not subject to federal COBRA requirements but subject to state law continuation coverage rules that provide for continuation coverage comparable to COBRA. The subsidy does not apply to health care flexible spending arrangements.

Who is Eligible for Subsidized COBRA?

Notably, not all COBRA qualified beneficiaries are eligible for subsidized COBRA. To be a so-called Assistance Eligible Individual (AEI), the qualified beneficiary must be eligible for COBRA due to the employee’s involuntary termination from employment or reduction in hours (in both cases, other than for gross misconduct). Additionally, the qualified beneficiary must fall into one of the following categories:

1. The qualified beneficiary becomes eligible for COBRA before or during the Subsidy Period and makes an election for COBRA coverage to be in place during the Subsidy Period.
2. The qualified beneficiary became eligible for COBRA prior to the Subsidy Period and either did not elect COBRA or elected COBRA but discontinued it prior to the Subsidy Period. The special COBRA re-election opportunity for this group is explained in the next section.

Who is Eligible for a Second COBRA Election Period?

The group described in (2) above must be granted a second opportunity to elect COBRA coverage and take advantage of the free COBRA coverage during the Subsidy Period. This special election period will begin on April 1, 2021 and end 60 days after notice of the election opportunity is provided to the AEI by the plan administrator. The DOL is required to issue a special model COBRA election notice by Monday, April 12, 2021 that plan administrators can use to inform this group about the special COBRA election opportunity.

Importantly, AEIs who elect COBRA during this special election period will begin COBRA coverage on April 1, 2021, but if the COBRA event occurred before this date, the coverage will still end 18 months from the date they originally became eligible for COBRA. Because COBRA coverage under the special election period begins on April 1, 2021, AEIs do not have to pay retroactive premiums back to the date they originally lost coverage and became eligible for COBRA. Note that this may lead to adverse selection under a health plan and employers with self-insured arrangements should plan accordingly.

While further clarification from the DOL on some aspects of the ARPA is expected, these new rules do not supersede the recent guidance mandating extension of the COBRA coverage election period, as described in our client advisory of [March 3, 2021](#). As such, COBRA beneficiaries still have the option to wait until the end of the deadline extension period to make their COBRA elections. However, to take advantage of the subsidy, they must make their COBRA elections within the special election period.

How Long Does the Subsidy Last?

The subsidy will end on the earliest of (i) September 30, 2021, (ii) expiration of the AEI's ordinary COBRA coverage (typically 18 months from the date of involuntary termination or reduction in hours), or (iii) the date the AEI becomes eligible for coverage under another group health plan or Medicare. In the event that the AEI becomes eligible for coverage under another group health plan or Medicare, the AEI is responsible for notifying the plan administrator of such coverage eligibility. The failure to do so will result in a minimum fine of \$250 (which can be increased if the failure is intentional).

Can an AEI Make an Alternative Coverage Election Within the Health Plan?

Under the ARPA, employers may also permit AEIs to change their coverage election to an option different from the one in effect when they first became eligible for COBRA. For an AEI to choose a different coverage option, the following requirements must be met: (1) the premium for the other coverage option must be equal to or less than the premium for the prior coverage; (2) the alternative coverage is also offered to similarly situated employees; and (3) the alternative coverage includes more than "excepted benefits" like dental and vision benefits.

How Does an Employer Get Reimbursed for the Premium Subsidy?

For the duration of the Subsidy Period, AEIs are deemed to have paid their COBRA coverage in full, provided they timely elect it. The full amount of the premium will be subsidized by the federal government via an employer tax credit. The sponsor of a plan may claim a tax credit against its liability for Medicare payroll taxes.

What Are the Notice Requirements?

The Act provides that employers must provide notice to (i) all employees who experienced an involuntary termination of employment or reduction in hours prior to April 1, 2021 (the beginning of the Subsidy Period) and is still within the 18-month COBRA period (whether they had elected, declined, or elected but discontinued coverage), and (ii) all employees who will experience such an event after April 1, 2021 (during the Subsidy Period). The notice must describe the subsidy and ability to enroll in a different coverage option (if so permitted by the employer). For AEIs who became eligible for COBRA prior to April 1, 2021, this notice must be provided by May 31, 2021. For AEIs who become eligible for COBRA after April 1, 2021, it is unclear from the statute exactly when notice must be provided, but it would be good practice to provide it at the time that usual COBRA election notices are provided. The DOL is required to issue a model notice for these purposes no later than Monday, April 12, 2021.

The Act also provides that another notice must be provided to inform AEIs when their subsidy will expire, and this must be done no more than 45 days and no fewer than 15 days before the expiration date. The notice must inform them that they may be eligible for unsubsidized coverage through COBRA. This requirement does not apply if the subsidy period is expiring due to the AEI's eligibility for other group health coverage or Medicare. The DOL is required to issue a model notice for this communication by April 26, 2021.

We expect further guidance on providing COBRA notices to qualifying family members in addition to the employee.

What Should Employers and Plan Administrators Be Doing Now?

1. Decide whether to wait for the forthcoming new model DOL COBRA notice or revise or prepare a

supplemental COBRA notice to be given now. We recommend waiting for the model notice to avoid miscommunication. If an employer wants to move forward with its own notice, however, the notice must include:

- The forms necessary for establishing eligibility for premium assistance;
- Contact information for the plan administrator and any other person maintaining relevant information in connection with the premium subsidy;
- A description of the second COBRA election period for those who are eligible;
- A description of the AEI's obligation to notify the plan of eligibility for other group health plan or Medicare coverage that would disqualify the AEI from receiving the subsidy, and the penalty for failure to carry out this obligation;
- A description, displayed in a prominent manner, of the AEI's right to subsidized COBRA coverage and any conditions on entitlement to the subsidy; and
- A description of the AEI's option to enroll in different coverage if the employer so permits.

2. Identify who has had an involuntary termination of employment or reduction in hours and is still within the 18-month COBRA period.

- Provide these individuals with the notice and election form to elect COBRA.

3. Determine whether AEIs will be allowed to elect other coverage options (at the same or lower costs).

4. Modify payroll administration to reflect the COBRA subsidy. This will include:

- Identifying AEIs
- Calculating the amount of the subsidy
- Tracking the duration of the subsidy

5. Keep track of premiums for the subsidized COBRA in order to accurately claim tax credits.

6. Prepare to provide the expiration notice for AEIs other than those whose coverage is expiring due to other group health coverage or Medicare.

If you have any questions about the COBRA subsidy, please contact a member of our Employee Benefits Group.